Supreme Court, U.S.
FILED

932097 JUN 27 1994

OFFICE OF THE CLERK

NO._____

SUPREME COURT

OF THE UNITED STATE

JUNE TERM, 1994

Robert Bonser,

Petitioner

v.

Town of Nottingham, New Hampshire

Respondent

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF

NEW HAMPSHIRE

PETITION FOR WRIT OF CERTIORARI

Terry L. Bonser, Pro Se
24 Smoke St.
Nottingham, NH 03290
(603) 679-2036

Mary L. Parks Bonser, ProSe
(same)

30pp

QUESTIONS PRESENTED

1. Where the New Hampshire Supreme Court is a state court of last resort, in a single-tiered appellant system, did the New Hampshire Supreme Court have a Constitutional obligation, both state and federal, to hear this matter concerning substantiated, blatant and gross abuse of discretion and denial of Due Process by the superior court, or at least, to have requested and consulted the transcript of the lower court proceedings prior to summarily affirming the decision below and declining to hear Petitioner's appeal?

2. Was, or is, the lower court actually recused or recusable as asserted by Petitioners based on the January 6, 1988 excessively, hostile Further Order On Motion To Recuse of Superior Court Judge Joseph P. Nadeau (1988 Recusal Order), together with the facts

that Judge Nadeau is now the Chief Justice of the superior court, that upon his appointment to that position Judge Nadeau began to receive copies of all court documents relative to Petitioners - including copies of ex parte communication between the judge specially assigned to this matter and the clerk of courts and, also as a result of the March 2, 1990 order of the New Hampshire Supreme Court, in related case 90-001, Town of Nottingham v. Robert A. Bonser & a., "the Chief Justice of the Superior Court assumes direct supervision of the court's action to comply with these orders:", even to the collection of fines, yet to be collected, that are a direct result of the May 21, 1986 order of Judge Nadeau that eventually resulted in the 1988 Recusal Order at issue here, which fines are now payable to the Superior Court, of which Judge Nadeau is the Chief Justice, as well as to Plaintiff, all in direct

conflict with the 1988 Recusal Order, above, as well as other instances of impartiality by the lower court towards Petitioners in the circumstances of this case? The above referenced orders are set forth in the Appendix to this Petition.

3. Is there, at the very least, the appearance of impartiality on the part of the lower court in the circumstances of this matter, warranting dismissal of this matter as previously requested by Petitioners?

4. Did the Supreme Court of New Hampshire abuse its discretion and violate the Constitutional Rights of the Petitioners by denying and declining to hear Petitioners' Motion For Declaratory Judgment And Invocation Of Article 10, Part First NH Constitution: Right Of Revolution, as set forth in Appendix?

THE PARTIES

The Petitioners:

Intervenor Cedar Waters Village Partnership, pro se, by all of its partners, Terry L. Bonser, pro se and Mary L. Parks Bonser, pro se, 24 Smoke St., Nottingham, NH 03290. Please see, Motion For Substitution Due To Death Of Party, dated June 27, 1994, filed simultaneously with this Petition.

The Respondents:

Plaintiff Town of Nottingham, a political subdivision of the State of New Hampshire, by its counsel of record, Mark Gearreald, Esq., P.O. Box 278, Exeter, NH 03833;

Also, should this Court determine that the Superior Courts of the State of New Hampshire, Chief Justice Joseph P. Nadeau, is a party, the address is 99 North State St., Concord, NH 03301.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW HAMPSHIRE

Petitioners, Intervenor Cedar Waters Village Partnership, pro se, by all of its partners, Terry L. Bonser, pro se and Mary L. Parks Bonser, pro se, respectfully request that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of New Hampshire entered in the above-entitled cause on December 13, 1993, Motion To Reconsider denied January 28, 1994, both in New Hampshire Supreme Court case no. 93-556, Town of Nottingham v. Robert A. Bonser & a.. These Orders and Motion are reproduced in the Appendix to this Petition.

OPINIONS BELOW

The prior opinions of the New Hampshire Supreme Court pertinent to this Petition and the judgment under review, are a four page memorandum order dated March 2, 1990, and a one page memorandum order dated November 18, 1992 in the State cases captioned Town of Nottingham v. Robert A. Bonser & a., and numbered 90-001 and 90-424, respectively. These orders are reproduced in the Appendix to this Petition.

The judgment in this case consisted of a one paragraph decision entered by the New Hampshire Supreme Court on December 13, 1993, in 93-556, supra, which became final when Petitioners' Motion For Reconsideration was denied by the New Hampshire Supreme Court's one paragraph order, dated January 28, 1994, in 93-556. Both orders, above, and Motion To

Reconsider dated December 22, 1993, above, are set forth in the Appendix to this Petition.

JURISDICTION

The judgment of the Supreme Court of New Hampshire summarily affirming without hearing or benefit of the transcript of the proceedings below, was entered on December 13, 1993 in 93-556, supra, and Petitioners Motion for Reconsideration was denied on January 28, 1994 in 93-556.

By Order of this Court (Souter, J.) in case No. A-823 the time for filing this Petition, absent further extension, was enlarged to include June 27, 1994.

This Petition is timely filed.

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 1257 (a) and 2101 (c), and Rules of

the Supreme Court of the United States, adopted December 5, 1989, effective January 1, 1990, especially but not only, Rule 10.1 (b) and (c), and as Petitioners are unable to obtain impartial trial, or meaningful appellate review, in the state courts of New Hampshire.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This Petition involves the Due Process Clauses of the Bill of Rights of the United States and New Hampshire Constitutions, and Canon 1 - 7 of the Code of Judicial Conduct, adopted with the full force and effect of law in New Hampshire as Canon 1 - 7, Rule 38, New Hampshire Supreme Court Rules. Canon 1 -7 and are substantially equivalent to the provisions of 28

U.S.C. § 455 governing disqualification's of Federal judges.

The Code of Judicial Conduct, promulgated by the New Hampshire Supreme Court, has the force of Statute law pursuant to the New Hampshire Constitution, Part 2, Article 73-a.

The Code of Judicial Conduct has also been adopted by every other state jurisdiction in America, which is why this blatant transgression of it, if left uncensured, will have such a far reaching effect.

New Hampshire Supreme Court Rule 25 (1) (a), as Rule 25 (1) (a) has the force and effect of law pursuant to the New Hampshire Constitution , Part 2, Article 73-a, and is the rule under which the New Hampshire Supreme Court summarily affirmed the June 14, 1993 order of the superior court below.

Rule 25 (1) (a) is set forth in the Appendix to this Petition.

STATEMENT OF THE CASE

A. SUMMARY OF PERTINENT FACTS

This matter stems from a finding of civil contempt against the named defendants, not your Petitioners, in the Rockingham County Superior Court case, Town of Nottingham v. Robert A. Bonser et al., E-438-81. See, Motion For Substitution Due To Death Of Party, dated June 27, 1994, submitted simultaneously with this Petition. Recently, since the original finding of civil contempt, Defendants and Petitioners have asserted that the lower court has converted the original finding of civil contempt, based on the superior court's stated purpose of the punishment, into criminal contempt without affording any of the parties due process of law,

and that is the subject of the simultaneously filed writ of certiorari.

The basic facts necessary for a determination of the questions presented in this Petition, regarding the documented, total lack of impartiality towards Petitioners by the superior court, requiring recusal, are not in dispute, but are contained in the official court records, as follows:

(a) The January 6, 1988 Further Order On Motion To Recuse (1988 Recusal Order), of now New Hampshire Superior Court Chief, Justice Joseph P. Nadeau, wherein Judge Nadeau recuses himself in the most hostile of terms, "from any further participation in these cases.", further Judge Nadeau states for the record, "[b]ecause of ...the strong feelings it has produced, I cannot expect to maintain objectivity in the

future.", [a]ccordingiy, by this order I am notifying the clerks of Superior Court that I will no longer sit on any matter involving Mr. Bonser [Defendant Robert A.Bonser] or his associates" (emphasis added). The above referenced order is set forth in the Appendix to this Petition.

(b) Court records reveal that immediately upon Judge Nadeau's appointment as Chief Justice of the Superior Court, Judge Nadeau began to receive copies of every document filed in this matter - even ex parte communications between the clerk of courts and the judge (McHugh, J.) specially assigned to this matter, from the "clerks of the Superior Courts". The documents referred to above, are attached to Motion To Recuse And Dismiss, dated February 3, 1993 and are set forth in the Appendix to this Petition.

(c) Court records also reveal that copies of every document were not being sent to the Chief Justice of the Superior Court prior to Judge Nadeau assuming the position of Chief Justice.

(d) The superior court's order of March 9, 1993, Town of Nottingham v. Robert A. Bonser, et al, E-438-81, attempted to cure this conflict by ruling, "the Court orders the clerk...not to forward any communication to Judge Nadeau...", but Petitioners asserted that the contamination had already occurred and the order also conflicts with the Supreme Court's Order below. Above referenced order is set forth in the Appendix to this Petition.

(e) An order stands in related New Hampshire Supreme Court case No. 90-001, Town of Nottingham v. Robert A. Bonser & a., dated March 2, 1990 that states, "[t]hat the Chief Justice of the Superior Court

assume direct supervision of the court's action...", even down to the collection of fines and penalties, yet to be collected, in this matter. The order above is set forth in the Appendix to this Petition .

(f) Now Chief Justice Nadeau was the judge that issued the $1,000/per day fine against the named defendants in this matter by Order dated May 21, 1986, supra. It is that order that eventually resulted in the 1988 Recusal Order at issue herein and has resulted in the superior court, that is not a party, awarding to itself, in this civil contempt proceeding, $183,850. as a "penalty, "sanction", "punitive fine", and which fines will go directly to the court of which Judge Nadeau is now Chief Justice. Because to do otherwise, "would demean the integrity of the Court, and would constitute an open invitation to any person to ignore orders and fear no

reprisal...", opined by the superior court in its June 14, 1993 order, in Town of Nottingham v. Robert A. Bonser, et al, E-438-81, as set forth in the Appendix to this Petition.

(g) Petitioners have raised Blaisdell v. City of Rochester, 135 NH, 589 (1992), in the lowers courts. This New Hampshire case is now cited extensively in The Annotations to Canons 1 - 3, New Hampshire Supreme Court Rules, Rule 38, and was a result of this same Judge Nadeau's failure to disclose, sua sponte, a known conflict between himself and the parties to the matter.

(h) The Supreme Court of New Hampshire declined to hear this matter on December 13, 1993, in 93-556, supra, and Petitioners' Motion To Reconsider denied January 28, 1994, in 93-556, all without hearing

or even requesting and reviewing the transcript of the proceedings below.

(i) Petitioners sought and received from this Court an Enlargement of Time To File Petition For Writ of Certiorari To The New Hampshire Supreme Court, until June 27, 1994 in A-823 Robert Bonser v. Town of Nottingham, New Hampshire.. This timely Writ of Certiorari follows.

B. PROCEEDINGS BELOW

Based on the $1000./day fine issued by Judge Nadeau in this matter on May 21,1986, in E-438-81, supra, the superior court, by its order of July 20, 1990, in E-438-81, awarded to Plaintiff Town the unlitigated amount of $2,000,000. in fines and penalties in direct defiance of the New Hampshire Supreme Court's Order of December 9, 1988 in Town of Nottingham v. Robert

A. Bonser and Cedar Waters Village, Inc., 131 NH, 120, 137 (1988) , in which the New Hampshire Supreme Court stated, "it is not the proper business of municipalities to profit from violations of their land use regulations, or the proper business of the judiciary to allow them to do so,". The named Defendants and Petitioners in this matter appealed the award to the New Hampshire Supreme Court in case no. 90-424 Town of Nottingham v. Robert A. Bonser, et al, supra, and by Order dated November 18, 1992 the New Hampshire Supreme court "Reversed and remanded" the matter back to the superior court. Immediately upon this matter being returned the superior court, the newly appointed Chief Justice Nadeau became reinvolved in the matter, as described above and below, creating a recusable conflict and Petitioners have consistently raised this issue and have never waived their rights in

this matter. See, New Hampshire Supreme Court Order, dated April 28 , 1993, in Town of Nottingham v. Robert A. Bonser & a, 93-263, set forth in the Appendix to this Petition.

REASONS FOR GRANTING THE WRIT

A. It is obvious from the record that every thing this court has ever endeavored to uphold in its Code of Judicial Conduct has been blatantly ignored and transgressed by the courts of New Hampshire, in the most flagrant of terms with no consideration of this Court's views in this matter. These issue were raised in Petitioners Motion For Reconsideration, dated December 22, 1993, in the State Supreme court case 93-556, supra, and in Petitioners Motion to Recuse And Dismiss, dated February 3, 1993 and Motion To

Reconsider March 9, 1993 Order On Defendants' Motion To Recuse And Dismiss, dated March 18, 1993, in the superior court case E-438-81, supra. All referenced motions, above, are set forth in the Appendix to this Petition.

B. It would be a travesty of justice for this Court to allow such a blatant abuse of judicial power to remain uncensured. Because the Code of Judicial Conduct that was violated is utilized throughout the United States. The effects of allowing such transgressions would be felt nation wide and undermine this Court's integrity and power as a supervisory authority to the courts of this nation. In addition, these fines, totaling $306,214.98, which are payable to the court and Plaintiff, would have a devastating effect on a small family business and the lives of the Petitioners. It would be unjust to force

Petitioners to pay fines that were assessed against the named defendants (now deceased) absent a fair trial, Due Process of Law, or meaningful appellate review. Please see, Bundy v. Wilson, 815 F.2d 125 (1st Cir.) 1987) and Liljeberg v. Health Services Acquisition Corp., 108 S. Ct. 2194 (1988).

CONCLUSION

For all the foregoing reasons Petitioners request that this Court review the merits of this matter by granting this Petition For Writ of Certiorari; and/or

Grant to Petitioners such other and further relief as may be right and just.

Petitioners also request that this Court allow Petitioners to correct any deficiencies in the Petition, if any are found, without prejudice.

The Petitioners thank this Court for its kind consideration of this matter.

Respectfully submitted,

Cedar Waters Village
Partnership, pro se
By all of its partners, pro se:

June 27, 1994

Terry L. Bonser, Pro Se
24 Smoke St.
Nottingham, NH 03290
(603) 679-2036

Mary L. Bonser
Mary L. Parks Bonser,
Pro Se
(same)

AFFIDAVIT OF FILING AND SERVICE

I hereby declare under penalty of perjury that I filed the requisite number of copies of this Petition with the Court by mailing the same, first class, postage prepaid, from New Hampshire on June 27, 1994.

At the same time, I mailed the requisite number of copies hereof to opposing counsel, Mark Gearreald, Esq., P.O. Box 278, Exeter, NH 03833, and curtesy copies to the New Hampshire Supreme Court, Noble Drive, Concord, NH 03301, also by first class mail, postage prepaid.

Mary L. Bonser
Mary L. Parks Bonser

Terry L. Bonser
Terry L. Bonser

STATE OF NEW HAMPSHIRE
COUNTY OF _____

Then came the above-named Terry L. Bonser Mary L. Bonser, both personally known to me, and affirmed that the foregoing affidavit of filing and service signed by him/her was true and correct, under penalty of perjury.

June 27, 1994

Angie Dunhurst
~~Notary Public~~/Justice of the Peace

My commission expires 9/27/94